

ER's only set.

DDA 76-0002

2 JAN 1976

NOTE FOR: Director of Central Intelligence

[REDACTED] IG appeal on shipment of
foreign vehicle.

Sir:

At your request, we have attempted through the DDO and the Office of Communications to identify the number of employees who have shipped or would have shipped foreign vehicles if it were reimbursed.

Using a lot of Kentucky windage, we estimate that 400-500 employees who owned foreign vehicles sold them when they learned they would not be reimbursed for the shipment. Another 50, we estimate, shipped their foreign vehicles and paid for it themselves.

Because of the imprecision of our numbers, we are not sure how helpful the above will be to you. The only way to get more accurate figures would be to issue an Agency-wide notice.

[REDACTED]
John N. McMahon
Acting DDA

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DCI/DDCI
Routing Slip

Executive Registry
75-9745/4

TO:

		ACTION	INFO.			ACTION	INFO.
1	DCI			11	LC		
2	DDCI			12	IG		
3	S/MC			13	Compt		
4	DDS&T			14	Asst/DCI		
5	DDI			15	AO/DCI		
6	DDA&S			16	Ex/Sec		
7	DDO			17			
8	D/DCI/IC			18			
9	D/DCI/NIO			19			
10	GC			20			

SUSPENSE

Date

Remarks:

I want to make
sure this is legal -
Is it? -

DCI/DDCI

12/29/75

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Executive Registry

75-9745/2

MEMORANDUM FOR: Deputy Director for Administration
Inspector General
General Counsel

SUBJECT: Shipment of Foreign-Made and Foreign-
Purchased Automobiles by Agency
Personnel

REFERENCES: A. Memorandum to DCI from IG dated
5 December 1975, Subject:
Employee's Appeal for Recompense

B. Memorandum to DCI from DDA dated
12 December 1975, Subject:
Shipment of Foreign-Made and
Foreign-Purchased Automobiles
by Agency Personnel

C. Memorandum to DCI from OGC dated
17 December 1975, Subject:
Waiver of Agency Regulations

D. Memorandum to DCI from IG dated
18 December 1975, Subject: OGC's
Request to Reverse the [REDACTED]
(POV) Decision

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1. After reviewing all of the above and discussing them with the individual authors, I reaffirm my decision of 8 December to approve the IG's recommendation for recompense to [REDACTED]

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2. In light of the arguments presented in the referenced memoranda, I additionally comment as follows:

- a. I do not change the Agency's decision in the fall of 1972 to abide by the Congressional ban on shipment at Government expense of foreign-purchased foreign-made cars.

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- b. The waiver of the regulation for this case is based on the understanding that I have the authority to do so under the law and the Inspector General's recommendation that equity calls for this resolution.
- c. The waiver is available for other employees who fit the class involved in this case, i.e., if the foreign POV was ordered in the US and paid for in the US, albeit acquired abroad, prior to notice of the Congressional ban. In this decision I am in no way taking issue with OGC Memorandum 75-2114, Subject: [REDACTED] [REDACTED] Shipment of Foreign-Made Automobile, dated 5 June 1975, that the transaction does not meet the test of not being "foreign purchased" in the technical legal sense since title did not pass, but I do believe that the absence of title or serial number is a sufficiently minor detail when matched against the payment for the car to justify this exception. It should not be the basis upon which a final equitable decision should be made as recommended by the Inspector General.

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3. To the extent that others can fall under this exception, I concur that they should be handled in the same way.

will not be signed - see /8
W. E. Colby
Director

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100-75-4267

Executive Registry

18 DEC 1975

75-9745/6

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : OGC's Request to Reverse the [REDACTED] (POV) Decision

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REFERENCES : 1) Memo for the DCI from Acting General Counsel,
dated 17 December 1975, "Waiver of Agency
Regulations"

2) Memo for the DCI from IG, dated 5 December 1975,
"Employee's Appeal for Recompense"

1. On 8 December, on my recommendation, you approved reimbursement of shipping charges on a POV for [REDACTED]. On 17 December, OGC asked you to reverse yourself. I believe you should uphold your decision of 8 December.

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2. In my letter of recommendation, OGC's position was summarized to the best of our ability. We still believe that summarization to be accurate. My recommendation was based on my view that the combination of poor administrative handling, precedent, and an overly technical legal opinion provided justification for you to use your special authority and grant redress.

3. I do not believe that OGC, in its 17 December memorandum, was responsive to my arguments. In paragraph one of that memorandum, OGC has ignored the fact that the book cable sent to the field began with the words "Guidance herein tentative..." and that the change in Agency regulations, although effective 1 January 1973, was published in January 1974. Nor, for that matter, does its memorandum note that even 1 January 1973 is after the date by which employees could have elected to ship their vehicles home at government expense.

4. In paragraph two OGC notes that in its legal opinion the car was foreign purchased. We accepted that opinion but note that it is overly technical because (1) the intent of Congress is not law and (2) the only reason the purchase did not qualify under the Uniform Commercial Code of Maryland was that the original bill of sale did not

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25X1A include the vehicle's serial number. (The car was selected and paid for in Maryland before [REDACTED] went overseas.) [REDACTED] and the dealer from whom the car was purchased said the serial numbers could have been available if anyone foresaw any conceivable need for them at that time (March 1971, when Agency policy was to ship all vehicles regardless of whether or not foreign made and foreign purchased).

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5. In paragraph three OGC states that [REDACTED] never claimed "...that he would have shipped his POV home if he had been aware of the true state of things, and specifically stated that it would have been a hardship to do so." I consider it pertinent and significant that he was denied the option.

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6. In paragraph four OGC states that your 8 December approval is either "...a retroactive change in the Agency's decision in the fall of 1972 to abide by the congressional ban, or a waiver of the regulation for an individual case." I submit that it is neither: it provides an exception, for the reasons already cited, for all those whose circumstances were the same.

7. The remainder of paragraph four is, I believe, misleading and even peculiar. I see no problem of uniform enforcement and questions of equity if all in like circumstances receive equal treatment (which, as noted, is what you approved on 8 December). As for the possibility of favoritism when exceptions are granted--that is the age-old problem of trying to be fair and even-handed and one of the reasons for the existence of an IG function. I believe that your 8 December decision, if not perfectly equitable, was more equitable than the alternative would have been or a reversal now would be.

8. Accordingly, I recommend that you uphold your decision to reimburse [REDACTED]

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[REDACTED]
Donald F. Chamberlain
Inspector General

cc: OGC
DDA

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OGC 75-4700

17 December 1975

Executive Registry

75-9745/2

IG

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Waiver of Agency Regulations

REFERENCE : Memo for the DCI fm IG, dtd 5 Dec. 75, Subj:
Employee Appeal for Recompense

1. Referent memorandum outlines the case of an employee who filed a grievance with the Inspector General for the denial of reimbursement for the shipment of a foreign-purchased automobile to the United States in June 1974. This employee was overseas in the fall of 1972 when Congress expressed an intent to cease Government payment of the shipping costs to the United States of foreign automobiles purchased by Federal employees overseas. The Agency considers itself bound by this expression of congressional intent and, accordingly, sent a book cable to the field notifying employees of the prohibition. In addition, Headquarters Regulation [REDACTED] was changed accordingly, effective 1 January 1973.

2. The employee in this case initially asked for a ruling from this Office that his POV was not foreign purchased, and hence not within the prohibition. In OGC 74-1868, dated 15 October 1974, this Office expressed the legal opinion that the vehicle in question was foreign purchased under both the Maryland Uniform Commercial Code and, more importantly, the intent of Congress as outlined in the House Report in the DOD Appropriation Act (House Report No. 92-1389, 11 September 1972).

3. The employee then submitted a request for reconsideration of our opinion, repeating essentially his former statements, but making a new allegation that he thought PCS orders were required to ship his POV to the U.S. even after receipt of the book cable. However, he never did claim that he would have shipped his POV home if he had been aware of the true state of things, and specifically stated it would have been a hardship to do so. In OGC 75-2114, dated 5 June 1975, this Office again stated that the employee was not entitled to payment. After reconsidering the employee's request the Inspector General, on 5 December 1975, recommended and you approved that the employee be reimbursed the cost of shipment of his POV.

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4. I strongly recommend that you reverse your decision approving payment for shipment of the employee's POV to the U.S. in June 1974. (I understand that payment has been withheld pending your review of this and a DDA memorandum.) In my opinion the reasons which existed for implementation of the ban on shipment at Government expense clearly apply to the employee in this case. Thus, your action in permitting reimbursement to the employee amounts to either:

- a. a retroactive change in the Agency's decision in the fall of 1972 to abide by the congressional ban, or
- b. a waiver of the regulation for an individual case.

The former represents a reversal of policy for which it might be wise, or perhaps necessary, to consult the appropriate committees of Congress. If, however, this is your decision, I recommend that an employee notice be published which advises all persons similarly situated that they may be entitled to receive payment for expenses incurred by them in the shipment of such vehicles. If the latter is your decision, it creates a problem of uniform enforcement of the regulation and questions of equity for others who are similarly situated. A recent commentary on the adherence to regulations by agencies which have created them noted the following:

Some agency violations of regulations may result in more favorable, rather than less favorable, treatment to the excepted party. For example, agencies have sometimes failed to enforce regulations requiring that a person seeking a government benefit comply with certain application procedures or meet specified substantive qualifications. Since such violations, or waivers, allow a person a benefit to which he would not otherwise be entitled, they may be unfair to those similarly situated who are denied waivers.

* * * *

Moreover, an agency's practice of waiving its regulations, without explanation, may breed resentment among those who are denied waivers, particularly as the number of persons who are granted them increases. 87 Harv. L. Rev. 629, 637 (1974).

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In referring to agencies' selective enforcement of regulations, Kenneth Culp Davis, a leading authority on administrative law practice, has stated in his book, Discretionary Justice, U. of Ill. Press (1969), at page 170:

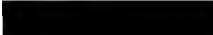
The discretionary power to be lenient is an impossibility without a concomitant discretionary power not to be lenient, and injustice from the discretionary power not to be lenient is especially frequent; the power to be lenient is the power to discriminate. (Emphasis in original.)

5. Again, I strongly recommend that you reverse your decision in this case or take the other action which I have indicated.

25X1A


Acting General Counsel

cc: DDA
IG

OGC:  sc

Distribution:

Original - Addressee

1 - DCI

1 - DDCI

✓ - ER via Ex Secy

(16 Dec 75)

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Executive Registry
75-9745/1

DD/A 75-5925

12 December 1975

MEMORANDUM FOR: Director of Central Intelligence

FROM: Deputy Director for Administration

SUBJECT: Shipment of Foreign-Made and Foreign-Purchased Automobiles by Agency Personnel

REFERENCE: Memo (ER 75-9745) to the DCI from the IG;
Subject: Employee's Appeal for Recompense,
dtd 5 December 1975

1. Action Requested: This memorandum contains, in paragraph 7, a recommendation for your approval.

2. Background:

a. On 10 October 1972, the House of Representatives published Amendment No. 57 to HR 14989 to require that all departments and agencies covered by the Act follow the restrictions placed upon the Department of Defense relative to the payment of shipping charges on foreign-made automobiles purchased in foreign countries (FORPOV's) by U.S. personnel. Our Office of Legislative Counsel (OLC) immediately initiated discussions with the appropriate Committee to obtain clarifications and interpretations which would permit us to comply with the directive and at the same time accomplish our mission. OLC specifically requested several exceptions for CIA, including waivers for those who owned their automobiles prior to the effective date of the directive and those who are transferred to or from countries requiring right-hand drive vehicles. Congress specifically denied us all exceptions except those noted in the following paragraph.

b. In order to give CIA personnel as much notice as possible, Book Cable 332597 was released by you as Executive Director-Comptroller on 2 November 1972. It described the information

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contained therein as tentative because it was the first communication on the subject and supplemental information would clearly be required. The cable was, however, absolutely specific with respect to the withdrawal of the authority to ship FORPOV's. The first three sentences stated unequivocally that "In view Congressional actions reported Reference A, CIA will be obliged withdraw authorities Reference B after 31 December 1972 for all official cover personnel who own a foreign-made motor vehicle purchased abroad, regardless of date of purchase. Until 1 January 1973 all personnel may ship FORPOV to CONUS if meeting rules Reference B. On and after 1 January 1973 no FORPOV of official cover personnel may be shipped to CONUS without prior Headquarters approval." The fact that we told Stations that we were seeking exceptions in no way modified the instructions to them, and we were subsequently denied all exceptions except for those covering non-official cover personnel and foreign cars purchased essentially for operational reasons under transportation allowances granted to owners.

c. This directive obviously had a significant impact upon our personnel abroad. There were numerous requests for exceptions, and one employee was so incensed that he wrote to his Congressman about it. In publishing our internal regulations, it has been consistently held by the Offices of Legislative Counsel and General Counsel that the Agency may not depart from the general guidelines which apply to all other departments and agencies except with Congressional approval. Consequently, in the normal administration of the directive we have granted only one exception, which involved an employee who died in a foreign country which refused to permit his widow to sell the car within the country. There have, however, been three exceptions granted by you and the DDCI on the basis of claims submitted to the Inspector General after disallowance in the command channel, and submitted to you without coordination with this Office or the General Counsel. We have become aware of the approvals when the claims have been routed to us for payment after approval by you or the DDCI.

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d. In each of the three special cases we have taken the position with the Inspector General that the payments are illegal and that they result not in equity for the claimant, but in preferential treatment which discriminates against all other employees who owned FORPOV's overseas under similar circumstances. None of the three cases involved circumstances which would justify a conclusion that they were unique or related in any way to our operational mission.

e. Had I been given an opportunity to comment to you on the claims, I would have strongly recommended that you reject them. Each claim was initially considered through the normal command channel, and had I felt that they had special merit I would have referred them to the General Counsel and you on behalf of the claimant and spared him the trouble of going through the appeal procedures. It is not possible for us to determine how many of our personnel were caught in this predicament in 1972. Many of them shipped their vehicles prior to 31 December 1972 and did without personal transportation for the remainder of their tours. Many others disposed of their automobiles overseas or shipped them home at their own expense. I do not think there are any circumstances in these three individual cases which would justify our providing them preferential treatment which is denied to hundreds of thousands of civilians and uniformed military personnel overseas throughout the world.

3. Recommendation: In view of the above, I respectfully request that you reconsider the approval which you have granted in the referent case. I understand that the General Counsel is forwarding a separate memorandum supporting this recommendation.

/s/ John F. Blake

John F. Blake
Deputy Director
for
Administration

APPROVED :

will not be approved - see /8

DISAPPROVED: _____

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DD/A 75-5932

**SUBJECT: Shipment of Foreign-Made and Foreign-Purchased
Automobiles by Agency Employees**

Distribution:

Original - Return to DD/A

1 - DDCI

~~1~~ - ER

1 - General Counsel

1-Inspector General

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INSPECTOR GENERAL

75-4186

5 DEC 1975

Executive Registry

75-9745

MEMORANDUM FOR: Director of Central Intelligence
FROM : Inspector General
SUBJECT : Employee's Appeal for Recompense

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1. Action Requested: Your decision is requested on the grievance of [REDACTED] who believes he should have been compensated for the shipment of his vehicle home to the US. Paragraph 7 has our recommendation.

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2. Background: [REDACTED] paid for a [REDACTED] car [REDACTED] in Maryland in March 1971 before leaving on a tour of duty in [REDACTED]. He accepted delivery of the car in [REDACTED]. At that time Agency regulations provided for Government shipment of POV's, foreign or domestic, regardless of where purchased.

3. On 2 November 1972 the Agency sent a cable to the field which said that after 31 December 1972 foreign-made and foreign-purchased vehicles would have to be shipped home at the owners' expense. The change in policy was a reflection of Congressional intent as expressed in a Conference Report.

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4. [REDACTED] tour of duty in [REDACTED] ended in June 1974, at which time his car was shipped to the US. He believes he should be reimbursed because the car was purchased in the US and he acted in accord with then existing regulations.

5. Staff Position: OGC has opined that [REDACTED] although paid for in Maryland, was purchased abroad. This opinion was based on the intent of Congress; it noted though that the purchase was foreign under Maryland's Uniform Commercial Code as well. Therefore, under Agency regulations at the time of his return, he was not entitled to have it shipped at Government expense. OGC also has noted, however, that (1) Congress' intent, which was expressed in a Conference Report, does not have the effect of law and (2) the DCI can change Agency regulations or grant exceptions to them, but should do so as a matter of policy for which there is a general rationale which can be applied to all in similar circumstances. Even though granting that a mechanism for relief exists, OGC does not believe that [REDACTED] is entitled to relief (or that [REDACTED] were entitled to the relief already granted to them, by previous DCI decision, with regard to shipment of their POV's).

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APPROVED:

DISAPPROV

and F. Chamberlain
Inspector General

DATE: 8 DEC 1975

DATE:

IMMEDIATE

SENDER WILL CHECK			
UNCLASSIFIED			
Form 3-65		160c	
(13)			
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	Director of Central Intelligence 7E.12 Hqs	1/2/76	wec/slp
2			
3	DDA		
4			
5			
6			
ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks:			
<p>foreign cars purchase paid for here 77</p>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
Acting DDA			
7E.26 Hqs			
UNCLASSIFIED			SECRET